IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/08/2004

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.19663 of 2000

I.O.B.Employees Trade Union
rep. by its Secretary
No.25, Rangoon Street
Thousandlights, Chennai 6. .. Petitioner

-Vs-

1.The Chairman and Managing
Director
Indian Overseas Bank
P.B.No.3765
763 Anna Salai
Chennai 2.
2.The Secretary to Government
of India, Ministry of Labour
Shram Sakthi Bhavan, Rafi
New Delhi.
3.All India Overseas Bank
Employees Union
rep. by General Secretary
C/o Indian Overseas Bank Central
Office, 763 Anna Salai,
Chennai 2. .. Respondents

This writ petition is preferred under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records relating to the impugned proceedings in L.No.12011/31/97 IR (B-II) dated 13.5.1998 of the 2nd respondent and quash the same and direct the first respondent to adopt uniform transfer policy and transfer all the office bearers, National Executive Members, Branch Secretaries and regional committee members of the majority union, who should have been transferred under the 10 year transfer policy, but not yet transferred and to disclose the present or proposed redeployment policy to all the unions and to implement the same uniformly for all irrespective of any union affiliation without any discrimination.
For Petitioner : Mr.K.V.Ananthakrushnan
For Respondents : Mr.J.B.Dolia for
Aiyar & Dolia for R1

Mr.N.R.Natarajan
ACGSC for R2

Mr.C.R.Chandrasekaran for R3
:ORDER
This writ petition has been brought forth seeking a writ of certiorarified mandamus to quash the proceedings of the second respondent dated 13.5.98 and to direct the first respondent to adopt uniform transfer policy and transfer all the office bearers, National Executive Members, Branch Secretaries and regional committee members of the majority union, who should have been transferred under the 10 year transfer policy, but not yet transferred and to disclose the present or proposed redeployment policy to all the unions and to implement the same uniformly for all irrespective of any union affiliation without any discrimination.
2. The affidavit in support of the writ petition and the counter filed by the first respondent are perused. This Court heard the learned Counsel for the petitioner and for the respondents also.
3. As could be seen from the available materials, the petitioner namely the Employees' Trade Union of the Indian Overseas Bank, represented by its Secretary, would urge that their union is one registered, though a minority one; that Sasthri Award governs the transfer of employees; but, it was not adopted by the first respondent while making a transfer; that the transfer was used as a weapon to victimise the members of the minority union, the petitioner herein; that during 1985, the bank formulated a five year transfer policy to transfer employees; that once again, the first respondent did not adopt uniform transfer of the employees under the five year policy; that some of the employees continued to work in the very same branch for more than 10 years; that therefore, in 1996 the bank brought forth another transfer policy, wherein the employees who have served for 10 years or more had to be transferred; but, it did not provide the guidelines for transfer of the union office bearers and branch representatives. It was further alleged that the bank has followed a discriminatory policy in transferring the members of the minority union, and in particular, the office bearers belonging to the majority union, have not been disturbed at all, while the members of the minority union have been transferred. A representation was made to the Government. The Regional Commissioner of Labour reported failure of conciliation to the 2nd respondent. The Government by its letter dated 13.5.1998 declined to refer the dispute for adjudication stating that it was an administrative prerogative of the management, and however, it has been reported that the impugned transfers were effected in respect of only those workmen, who had put in more than 10 years of service in a particular branch/office, and moreover, all the transfers have been effected within the city limit. Again a representation was made which is pending consideration. The management taking advantage of the fact that the government had declined to refer the dispute for adjudication to the Industrial Tribunal, continue to victimise the members belonging to the petitioner minority union, and after serving the legal notice, which brought forth the untenable allegations, the petitioner was constrained to bring forth the instant writ petition.
4. The first respondent came forward to state in short that uniform policy has been followed by the bank strictly in the matter of transfers; that there was no discrimination that was made between the members of the minority union and that of the majority union; that they have referred the matter to the Government, which declined on the failure of the conciliation to refer the matter to the tribunal, and they have again made representations. From the

very averments, it would be clear that the petitioner has come forward to state that the transfers have been made on the basis of discrimination, which requires evidence to be recorded and considered. While the proper means to get the reliefs are available, the petitioner has come with this method of filing a writ petition, which cannot be gone into either by recording evidence or by consideration, before this Court invoking the writ jurisdiction, and hence, it has got to be dismissed.

5. The learned Counsel for the second respondent would submit that originally a representation was made; that as the conciliation proceedings failed, the government on proper perception of the matter have declined to refer the matter to the tribunal and rightly too, and hence, the writ petition carries no merits.

6. The third respondent All India Overseas Bank Employees Union would come forward to state that no discrimination has been made by the first respondent bank in making transfer since all have been transferred within the city, and apart from that, all the other allegations are baseless, and hence, the writ petition requires a dismissal.

7. After careful consideration of the rival submissions and scrutiny of the available materials, this Court is of the considered opinion that the writ petition has got to be necessarily dismissed.

8. The petitioner, Indian Overseas Bank Employees' Union, comes forward to state that it constitute the minority union in the first respondent bank, and a discrimination policy has been adopted by the bank after taking the 10 years policy of transfer by transferring the members of the minority union, but not making the transfer of the members of the majority union. The reply given by the first respondent bank that following the 10 years policy all the members have been transferred within the city is not disputed by the petitioner's side. This Court is unable to notice any discrimination in that regard.

9. So far as the contention of the petitioner's side that number of transfers have been made and all particulars are available are concerned, this fact is not being disputed by the respondents' side. In such circumstances, without investigating into the matter by recording evidence, it cannot be decided here, and the writ jurisdiction of this Court cannot be called upon to go into the matter, record the evidence or investigate the matter to arrive at a decision. That apart, a representation was brought forth before the government. It is also brought to the notice of the Court by the second respondent that the government have declined to refer the matter to the tribunal, and hence, another representation has been given which is also pending consideration. The petitioner instead of pursuing the representation or making out the claim before the proper forum for appropriate reliefs, has invoked the writ jurisdiction of this Court. As rightly contended by the learned Counsel for the petitioner, a perusal of the Sasthri Award which would govern the transfer of employees including that of the first respondent bank, speaks of only the registered Union and does not whisper about the recognised union. According to the first respondent bank, no discrimination has been followed while making the transfer of the employees among the unions whether it is minority or majority union. The said statement of the bank found in the counter affidavit is recorded.

10. In the result, this writ petition fails, and the same is dismissed, however, with a liberty to the petitioner to move the proper forum

to get the redressal. It is brought to the notice of the Court that the representation made by the petitioner's side is pending in the hands of the second respondent, and if so, the second respondent is directed to give disposal to the same in accordance with law within a period of two months from the date of receipt of copy of this order. No costs.

Index : yes
Internet: yes
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